

November 10, 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: IB Docket No. 16-155, Notice of Ex Parte Presentation

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b), Level 3 Communications, LLC (“Level 3”) notifies the Commission of an *ex parte* presentation in the above-referenced proceeding. On November 8, 2016, Nick Alexander (Associate General Counsel, Federal Affairs, Level 3) and I met with Mindel De La Torre, Troy Tanner, Kathleen Collins, David Krech, and Denise Coca, all of the International Bureau, to discuss the Commission’s proposals to reform the Executive Branch review process.

In the meeting, we discussed Level 3’s recent meeting with staff of the National Telecommunications and Information Administration (“NTIA”) regarding the Executive Branch’s views on the issues raised in this proceeding, including review timelines, the proposed certifications, and the exemption of certain applications from Team Telecom review. We emphasized that the Communications Act grants the Commission—and no other agency—the authority to interpret and implement licensing, transaction-consent, and foreign-ownership assessment provisions and the public-interest standard. Similarly, Executive Order 10530 provides that the Commission is:

designated and empowered to exercise, ***without the approval, ratification, or other action of the President***, all authority vested in the President [under the Cable Landing License Act] including the authority to issue, withhold, or revoke licenses to land or operate submarine cables in the United States: *Provided*, That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such ***advice from any executive department or establishment of the Government as the Commission may deem necessary***

Exec. Order No. 10,530 § 5(a), *codified at* 3 C.F.R. 189 (1954-1958), *reprinted in* 3 U.S.C. § app. (1988) (emphasis added). The Commission can and should consider the views of the Executive Branch on issues of national security, law enforcement, and public safety as part of its public-interest analysis under the Communications Act or as deemed necessary to implement the Cable Landing License Act pursuant to Executive Order 10530, but it is free to do so within timeframes established by the Commission and otherwise consistent with Commission procedures.¹

We also noted that the Executive Branch has failed to address concerns about the proposed certification that would amount to a new data localization requirement. NTIA has conceded that “existing authorities may not specifically require applicants make communications and records available in a form and location that permits them to be subject to legal process under U.S. law, or that applicants designate points of contact in the United States for the execution of legal process.”² Imposing such requirements through certifications would propel the Commission into uncharted territory on issues that continue to be litigated in federal court. That expansion would be unjustifiable on the merits, unsupported by the record in this proceeding, and in excess of the Commission’s authority.

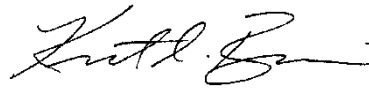
¹ The requirement for Department of State approval was streamlined in 2001 as part of the Commission’s own streamlining process for cable landing license applications, with State authorizing the Commission “to grant or revoke all submarine cable landing license applications, provided that the FCC has notified in writing the United States Coordinator for International Communications and Information Policy of each such license application, and ‘that no objections are raised by the Department within 30 days after such notification.’” See Department of State Media Note, *Submarine Cable Landing License Requests* (Dec. 20, 2001), <https://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

² Reply Comments of the National Telecommunications and Information Administration at 7-8, IB Docket No. 16-155 (filed Sept. 2, 2016).

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Should you have any questions, please contact Kent Bressie by telephone at +1 202 730 1337 or by e-mail at kbressie@hwglaw.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kent Bressie".

Kent Bressie

Counsel for Level 3 Communications, LLC

cc: Mindel De La Torre
Troy Tanner
Kathleen Collins
Denise Coca
David Krech